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IN THE

Supreme Court of the United States

October Term, 1963

No. 820

ALFRED G. SICA,

Petitioner,

vs.

UNITED STATES OF AMERICA.

Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

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Certiorari should be granted to settle the important question arising in this case. The lower court erred in approving the receipt in evidence in the trial over objection that it was hearsay of a letter and financial statement from the witness Vaughn to Seedman and checks which were paid to him concerning a business trip to Los Angeles and the expenses incident thereto. It was hearsay and never connected, we contend, to Sica	14
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ALFRED G. SICA, *Petitioner,*

vs.

UNITED STATES OF AMERICA.

Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

Petitioner, Alfred G. Sica, respectfully prays for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit to review its judgment affirming judgments of the United States District Court for the Southern District of California, sentencing petitioner to three years imprisonment.[1]

Opinions Below.

Trial in the District Court was by a jury.

The opinion of the court below, is appended hereto as Appendix "A", and is also found in the Clerk's Record of the Circuit Court. The opinion of the Court

[1]The record as certified to this Court by the Clerk of the Court below consists of the proceedings in the Circuit Court, Volume 1, one volume consisting of the Reporter's Transcript of the proceedings in the District Court, including the testimony taken at the trial. The Reporter's Transcript will be referred to as [R. T.]; and the Clerk's Record in the Court of Appeals will be referred to as [R. C. A.].

below is as yet not reported. The judgment of the court below is appended hereto as Appendix "B". A copy thereof also appears in the Clerk's Transcript from the Circuit Court.

A Motion for Rehearing was made and also to the effect that the Court remand the case to the United States District Court for the Southern District of California for the purpose of taking evidence with reference to the subject of whether or not there was any limitation placed upon the receipt in evidence of Exhibits 10 to 13 inclusive, and whether or not counsel for the defendant were in any way notified by the Court that any of the said exhibits were admitted for limited purposes. The Motion requested a proceeding in accordance with *Brown v. United States*, 9th Circuit, 314 F. 2d 393 (1963). The Motion was supported by an affidavit, and the motion with the supporting affidavit are appended hereto as Appendix "C". They are also to be found in the Transcript of the Record by the Circuit Court.

The order denying the Petition for Rehearing and Motion are attached hereto as Appendix "D". It is also to be found in the Clerk's Transcript of the Circuit Court filed herein.

District Judge Foley, Sr., who dissented in the original opinion, voted in favor of granting the Pe ition for Rehearing and the Motion. This is incorporated in the Order Denying the Petition for Rehearing and Motion.

Grounds on Which the Jurisdiction of This Court Is Invoked.

I.

The date of the judgment sought to be reviewed and the time of its entry is November 18, 1963 [R. C. A. Judgment].

The Petition for Rehearing timely filed was by the Court denied January 13, 1964, as was the Motion to Remand denied on the same day [R. C. A.]. The Order Denying Petition for Rehearing and the Motion are attached as Appendix "D". Judge Foley voted in favor of granting the Petition for Rehearing and Motion.

The statutory provision believed to confer on this court jurisdiction to review the judgment in question by Writ of Certiorari is 28 U. S. C. 1255(1).

The Petition for Rehearing is attached hereto as Appendix "E".

Questions Presented for Review.

1. The lower court erred in approving the receipt in evidence in the trial court over objection of a letter and financial statement from the witness Vaughn to Seedman, a witness, and checks which were paid to him concerning a business trip to Los Angeles and the expenses incident thereto. It was hearsay and never connected to Sica.

1(a). Subsidiary to this question is the question as to whether petitioner's counsel at the trial, after making the objection of "hearsay", were under a duty of asking the trial court to instruct "that the evidence was received for a limited purpose only.".

1(b). Also, subsidiary to this question of "hearsay" is the question of whether the trial counsel, by reason of unreported argument and conferences about the matter, were informed by the court that Exhibit 10, the Vaughn-to-Seedman letter was to be admitted, not for the truth of the statement or statements but, only to establish Vaughn's statements were made.

1(c). Also, subsidiary to the "hearsay" question is the proposition as to whether the court below erred in denying our motion to remand to determine whether or not the defendant, or his counsel, were advised that such hearsay evidence was received for a limited purpose only, thus placing upon counsel for the defendant the duty to request an instruction. We contended, by motion, we were never so advised, and moved to remand to take evidence on that question [See Motion and supporting affidavit R. C. A.], and Appendix "C". Also see Appendix "D", order denying motion. Judge Foley voted in favor of granting the motion.

2. Was the evidence sufficient to sustain the verdict as to Count II, the making of a false statement, in violation of 18 U. S. C. 1001.

Constitutional Provisions and Statutes Involved.

Involved are the Fourteenth Amendment to the Constitution and 18 U. S. C. 1001. They are set forth in Appendix "F".

Statement of the Case.

The trial court had jurisdiction under 18 U. S. C. 3231.

By an Indictment filed in the Southern District of California, the petitioner was charged in Count I with a violation of 26 U. S. C. 7201, in that on or about the

15th day of February, 1958, in the County of Los Angeles, within the Central Division of the Southern District of California, he willfully and knowingly attempted to evade and defeat a large part of the income tax, namely, that he had stated his adjusted gross income was $2,550.10, and that the amount of income tax due and owing by him was $341.00, whereas, he had an adjusted income of $7,550.10, upon which he owed the Government $1,418.53. On Count II he was charged with a violation of 18 U. S. C. 1001, in that on or about the 13th day of November, 1958, in the County of Los Angeles, within the Central Division of the Southern District of California, that he, Sica, did willfully and knowingly conceal and cover up a material fact and make a false, fictitious and fraudulent statement and representation in a matter within the jurisdiction of the Internal Revenue Service of the Treasury Department, a department and agency of the United States, in that he stated to the said department and agency that:[2]

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[2]"Since Mr. Michael Cohen was released from prison on October 9, 1955, I have been a personal friend of Mr. Cohen and associated with him in a purely social manner.

"Since January 1, 1955, I have not received any moneys from Mr. Cohen; nor have I paid any moneys to Mr. Cohen. During the period January 1, 1955, to date, I have not received any moneys from anyone acting on Mr. Cohen's behalf; nor, have I paid any moneys to anyone on Mr. Cohen's behalf.

"During the period January 1, 1955, to date, I have had no business connection or negotiations with Mr. Cohen, directly or indirectly.

"During the period January 1, 1955, to date, I have made no substantial gifts to Mr. Cohen; nor has Mr. Cohen made any gifts to me, other than a wrist watch as a birthday gift in September, 1957.

"During the period January 1, 1955, to date, I have made no loans to Mr. Cohen; nor did he make loans to me.

"During the period January 1, 1955, to date, I have participated in no financial transactions to which Mr. Cohen also was a party."